

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DB STRUCTURED PRODUCTS, INC.,

Plaintiff,

ANSWER

-against-

07 CV 4115

FIRST CAPITAL MORTGAGE CORP.,

JURY DEMAND

Defendant.
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Defendant, FIRST CAPITAL MORTGAGE CORP., by its attorneys, AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP as and for its Answer to plaintiff's Complaint, respectfully shows to this Court and alleges upon information and belief:

ANSWERING AS AND FOR JURISDICTION AND VENUE

FIRST: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "2" and respectfully refer all questions of law to this Honorable Court.

ANSWERING AS AND FOR THE PARTIES

SECOND: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "3".

ANSWERING AS AND FOR FACTUAL ALLEGATIONS

The Seller Loan Purchase Agreement

THIRD: Denies the allegations contained in Paragraph "5" in the form alleged, except admit that an agreement was entered into.

ANSWERING AS AND FOR SUBPARAGRAPH HEADING ENTITLED:

**Defendant's Failure to Repurchase
Loans With Early Payment Defaults From DBSP**

FOURTH: Denies the allegations contained in Paragraph "8" in the form alleged, except admit that pursuant to the Purchase Agreement, Defendant from time to time offered to sell and DBSP agreed to purchase certain mortgage loans.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs "9", "10", "11", "12", "14", "16" and "17".

SIXTH: Denies the allegations contained in Paragraph "13" in the form alleged, except admit that the April 26, 2007 letter was received.

SEVENTH: Denies the allegations contained in Paragraphs "15" and "18".

ANSWERING AS AND FOR THE SUBPARAGRAPH HEADING ENTITLED

Indemnification

EIGHTH: Denies the allegations contained in Paragraph "19" in the form alleged.

NINTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs "20", "22", "23" and "24".

TENTH: Denies the allegations contained in Paragraph "21".

**ANSWERING AS AND FOR A FIRST CLAIM FOR RELIEF
(Breach of Contract – Purchase Agreement**

ELEVENTH: In response to Paragraph "25", repeats each admission or denial contained in Paragraphs "FIRST" through "TENTH" herein as though fully set forth hereat.

TWELFTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "26".

THIRTEENTH: Denies the allegations contained in Paragraph “27” in the form alleged, except admit the receipt of the April 26, 2007 letter.

FOURTEENTH: Denies the allegations contained in Paragraphs “28” and “29”.

ANSWERING AS AND FOR A SECOND CLAIM FOR RELIEF
(unjust Enrichment)

FIFTEENTH: In response to Paragraph “30”, repeats each admission or denial contained in Paragraphs “FIRST” through “FOURTEENTH” herein as though fully set forth hereat.

SIXTEENTH: Denies the allegations contained in Paragraph “31” in the form alleged, except admit that DBSP has purchased loans from the defendant.

SEVENTEENTH: Denies the allegations contained in Paragraphs “32” and “33”.

ANSWERING AS AND FOR A THIRD CLAIM FOR RELIEF
(Indemnification for Legal Fees And Related Costs)

EIGHTEENTH: In response to Paragraph “34”, repeats each admission or denial contained in Paragraphs “FIRST” through “SEVENTEENTH” herein as though fully set forth hereat.

NINETEENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “35”.

TWENTIETH: Denies the allegations contained in Paragraphs “36” and “37”.

ANSWERING AS AND FOR A FOURTH CLAIM FOR RELIEF
(Specific Performance)

TWENTY-FIRST: In response to Paragraph “38”, repeats each admission or denial contained in Paragraphs “FIRST” through “TWENTIETH” herein as though fully set forth hereat.

TWENTY-SECOND: Denies the allegations contained in Paragraph “39”, in the form alleged and respectfully refer all questions of law to this Honorable Court.

TWENTY-THIRD: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs “40”, “41” and “42” .

TWENTY-FOURTH: Denies the allegations contained in Paragraph “43”, in the form alleged.

TWENTY-FIFTH: Denies the allegations contained in Paragraphs “44”, “45” and “46”.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

TWENTY-SIXTH: The Complaint herein fails to state a valid cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

TWENTY-SEVENTH: The contract is invalid, because there is a lack of consideration.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

TWENTY-EIGHTH: The plaintiff, DB STRUCTURED PRODUCTS, INC., is in breach of contract.

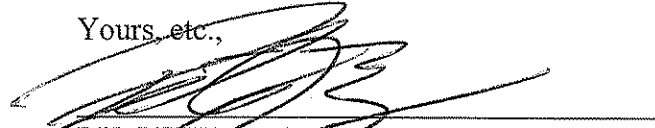
AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

TWENTY-NINTH: The Complaint should be dismissed as it is in violation of the Statute of Frauds.

WHEREFORE, defendant, FIRST CAPITAL MORTGAGE CORP. demands judgment dismissing the Complaint, together with the costs and disbursements of the within action.

DATED: New York, New York
July 10, 2007

Yours, etc.,

A handwritten signature in black ink, appearing to read 'P. Fazio', is written over a horizontal line.

BY: PETER J. FAZIO, ESQ. (1211)
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendant
FIRST CAPITAL MORTGAGE CORP.
Office & P.O. Address
757 Third Avenue
New York, New York 10017
Tel.: (212) 593-6700

TO: THACHER PROFFITT & WOOD, LLP
Attorneys for Plaintiff
Two World Financial Center
New York, New York 10281
Tel.: (212) 912-7400